VIRGINIA LAW REGISTER

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Issued Monthly at $5 per Annum. Single Numbers, 50 cents.

All Communications should be addressed to the PUBLISHERS.

The Retirement of Judge James Keith, President of the Supreme Court.

The announcement that Judge Keith would not be a candidate for reelection before the Legislature which meets this winter, but would retire from the Bench he has so adorned, at the expiration of his term, December 31st, 1916, has been received with universal regret.

It would not be fit or proper at this time to attempt to express the great loss our supreme tribunal will sustain when this distinguished jurist retires to his well-earned repose. The fact that the State is to have the benefit of his valuable services for another year prevents a full expression of the sentiments which are entertained by all who know him, whether personally or through his opinions. He has served Virginia in the field and on the forum, and for many years has worn the judicial ermine in the Circuit and Appellate Courts with the most conspicuous ability. Elected President of our Supreme Court of Appeals in January, 1895, Judge Keith rounded out twenty years of service as such, at the beginning of the present year. His opinions will be found in twenty-five volumes of our reports, commencing with Blanton *v.* Commonwealth, 91st Va. p. 1, and the coming thirteen months will, we trust, add many to the 117th volume of Virginia Reports. In vigour, conciseness, depth of learning and clearness of expression, they are worthy of the palmiest days of the great tribunal over which he has so long and ably presided.

We wish him another year of health and strength and hard work for the benefit of the Commonwealth, and many years of peaceful enjoyment of that mellow time which comes when a life of usefulness begins the rest to which it is entitled. In the

years that are yet to be, he will doubtless miss the activities of that busy life, but he can be assured that his friends will say

"Ampliat aetatis spatium sibi,
Hoc est vivere bis, vita posse priore frui."

Professor William M. Lile as Cándidate for Judgeship upon the Supreme Court of Appeals.

As a successor to Judge Keith will have to be elected by the General Assembly which meets in January, 1916, the names of several candidates have already been suggested. All of the names mentioned are gentlemen of the highest character, of well known ability, and would without doubt dignify any position to which they may be chosen. The REGISTER can have but one choice, however, when the name of one of its founders is mentioned in connection with the Supreme Court judgeship. Any success which this periodical may have attained is due to the eminent talent of Professor Lile and his able associates, the elder and the younger Burks and Professor Graves. They gave to this journal a dignity and value hard to be overestimated. Its opinions editorially expressed by these founders have more than once guided the courts towards the right principles of decisions and carried a weight in this Commonwealth recognized by the Bench and the Bar. Many of these editorials and comments came from Professor Lile and attracted notable attention from the profession. Able, dignified and calmly judicial, they exhibited a vigor and strength, coupled with deep learning, which would have adorned any opinion of our highest legal tribunals.

Professor Lile is a profound lawyer with a mind eminently fitted for the bench. He has nothing of the partisan in his mental makeup, but takes in both sides of a question, giving to each side an impartial view and arriving at a just conclusion by clear, logical methods. In weighing authorities—one of the most important qualifications of a judge nowadays—he is peculiarly strong and knows how to hold the scales to a proper

adjustment. Before he was elected to the Professorship of Law in the University of Virginia he practiced with eminent success in Lynchburg and took part in much important litigation, giving him not only a clear insight into methods of practice, but a wide knowledge of the principles of jurisprudence as applied in the courts. He was rapidly winning a place amongst the foremost lawyers of the State when called to succeed the distinguished Professor John B. Minor. To fill worthily the chair of that great teacher of the law was a task worthy of any intellect, and one not to be lightly undertaken. To say that Lile succeeded in giving absolute satisfaction would be putting the matter too modestly. After only a few years of teaching it was recognized that he was in many ways the equal of that distinguished man, and the pupils who sat in his class learned to look up to him and his teaching with an admiration and respect worthy of the greatest days of the School. His election as President of the Virginia Bar Association is a testimony to the high regard in which he is held by the Bar of this Commonwealth. In our opinion he would make the ideal Appellate Judge and his opinions would carry a weight equal to the opinion of any judge who has adorned that great tribunal. Virginia will be indeed fortunate if she can secure his services upon her highest court.

A New Lien.

The decision of our Supreme Court of Appeals in the case of Isaacs *v.* Isaacs (decided September 9th, 1915) establishes a lien which is somewhat unexpected, but which is clearly justified. The question is one which has never before been presented to our Supreme Court: It is to the effect that a decree for alimony payable in monthly installments during the lifetime of the beneficiary, constitutes a lien in her favor upon the husband's real estate from the date of such decree, not only for the installments presently due, but for those *that shall fall due* under such decree in the future. It is to be regretted that one can not gather from the case as reported whether the decree in question was ever docketed. We can hardly suppose the Court intended to hold that

such a decree would constitute a lien against purchaser for value and without notice, and yet the language used is very broad. "If the whole alimony due and to become due under the decree, were not thus secured by the lien of the decree making the allowance," (the Court says) "the provision for the wife could be easily defeated by the act of the husband in selling and conveying his real estate, or as in the case before us, by confessing a judgment in favor of some creditor large enough to render wholly ineffectual the decree for alimony, thereby leaving the wife without the means of support. Under our statutes the powers of the court are broad in making in addition to the divorce such further decree as it shall deem expedient concerning the estate and maintenance of the parties. The power thus reposed in the courts would be practically abrogated unless the decree allowing alimony constituted a lien upon the husband's real estate and as such extended to, covered and secured the installments of such alimony as they respectively fell due in the future."

Our Supreme Court, admitting there was conflict of opinion, followed Goff *v.* Goff (W. Va.), 53 S. E. 769, and Renick *v.* Ludington, 14 W. Va. 367.

We think the decision eminently just and right, but suppose of course it is to be qualified by Section 3570 of the Code of 1904, providing that no judgment shall be a lien on real estate against a purchaser for value without notice until and except from the time it is duly docketed, etc. In the case under discussion there seems to have been no question of purchaser, etc., but the decree for temporary alimony was obtained January 11th, 1909, and made permanent by a decree dated February 4th, 1910. A judgment was confessed at the February term, 1909, of the Wise Circuit Court, where the divorce suit was pending, and the decree for *permanent* alimony was a year later. The Court held that the decree for the *entire* alimony took precedence of the confessed judgment and reversed the lower court, which held that the amount of temporary alimony had priority over the judgment and the amount of permanent alimony was subsequent thereto. We do not see anything to indicate that this decision alters in any way the prevailing law as

governed by Section 3570 of the Code, but those who examine titles had better make a note to examine for decrees for alimony hereafter.

The Rights of an Autoist.

It is not often that we hear of the unfortunate autoist recovering anything for injuries done to his auto by animals in the road, but in a late case in one of the county courts of England the autoist seems to have recovered for damages done to his auto by a flock of sheep. It seems that England has practically what amounts to a fence law—that is to say, that the owner of sheep is required to keep them fenced in. In the case decided by the court the owner of the sheep failed to keep his flock properly fenced in and a lot of them escaped into the public road. An autoist coming along the road ran into the sheep, his machine was overturned and several hundred dollars worth of damages done thereto. He promptly sued the owner of the sheep and recovered a judgment for several hundred dollars damage to the machine. Our brethren, therefore, who are fortunate enough to own machines can hold themselves in readiness hereafter to sue for damages instead of being sued, in case a flock of sheep or other obstreperous animals gets in their way.

A Rather Expensive Tuppence.

It is said that some of the most important decisions in English Common Law Courts have been decided in cases where the amounts were ridiculously small. A late case before the magistrates at Bow Street in London establishes the fact that no sum is too small for the attention of a court of justice if injury is done thereby and a law violated. The London Hackney Carriage Act, which is as old as 1831, provides that if the hirer refuses to pay the fare he may be summoned and reasonable satisfaction for his fare or for his damages or for his loss of time may be awarded by the magistrate to the cab driver; in default of payment the offender may be committed to prison with or without hard labor, for a period not exceeding one

month, but the complaint must be made within seven days of the offense. And under a later act, passed in 1843, the magistrate can also decide civil disputes as to the amount of fare between the parties and award damages and costs; these proceedings are, however, civil and the sum awarded is recovered as in debt.

A cab driver named Morgan drove one Sir John Brunner from the Euston Station to the Reform Club. The sum registered on the meter, as the cab driver claimed, was one shilling and six pence, and the cabman was entitled to an additional tuppence (four cents) for luggage carried outside. Sir John declined to pay the additional tuppence and Morgan summoned him before the magistrate at Bow Street, and the result was that Sir John was ordered to pay the tuppence and two guineas ($10.00) costs. Evidently there is no such thing as *de minimis* in the English law, and there ought not to be in any. The American people are too apt to suffer injustice if a small amount is involved, but the Englishman thinks and acts otherwise, with the result that the English people are probably the most law-abiding and law-enforcing people in the world.

The October Term of the Supreme Court of the United States.

The cases that have been argued and are to be argued before the Supreme Court of the United States at the term which commenced in October, and to which we alluded in our November issue, are of far-reaching importance. There were six cases involving the Income Tax, five of which have been argued and submitted. There is one case in which the Corporation Excise Tax is involved, which has been argued and submitted. There are two cases, Donald, Secretary, etc., *v.* P. & R. Coal & Iron Company, and Frier, Secretary, etc., *v.* Western Union Telegraph Company, involving the right of foreign corporations in Wisconsin to remove causes from the State to the Federal Courts. The Sherman Antitrust Law is before the court in United States *v.* Habmurg-Amerikanische Packet-Fahrt Actien-Gesellschaft & others. The defendants are charged with the

offense of attempting to monopolize the transportation of third-class passengers between American and European ports. The case of International Harvester Company *v.* United States, in which Judge Sanborne's dissenting opinion in the lower court received wide attention, will also be argued at the present term. The case of Cheney Bros. *v.* Massachusetts involves the question as to what is doing business in Massachusetts as far as a corporation is concerned. The profession will watch with much interest the result of this case, as the opinions rendered by the Massachusetts court seem to us to be very sound. Looney *v.* Crane Company is a case in which the Attorney General and Secretary of the State of Texas were restrained from collecting the annual franchise tax on the capital and surplus of a foreign corporation. We do not suppose, however, that the Court will answer the celebrated question as to "Who's looney now?" The case of Pick *v.* Jordan is of much interest, owing to the fact that the Supreme Court of California reversed itself and held that the only license tax in that State was constitutional, although based on the entire authorized capital stock of foreign corporations. The Supreme Court will have an opportunity in deciding this case to distinguish between its former decisions in the Western Union and Pullman cases against the State of Kansas, 216 U. S. 156 and 216, and the Baltic Mining Co. & S. S. White Dental Manu. Co. *v.* Massachusetts, 231 U. S. 68.

It is to be regretted that Mr. Justice Lamar is prevented by serious illness from sitting at the present term of the Court. Those of the Virginia Bar who had the honor of meeting this distinguished jurist at the meeting of the State Bar Association at the White Sulphur Springs, in August of this year, will regret to learn that his illness, if not serious, will certainly be protracted.

International Law.

Of course, as might well be expected, the papers and journals are full of discussions as to International Law in this time of stress and storm in which two-thirds of Europe are at war. New questions constantly arise and the problem before the

nations is as to how to apply the law to the new cases. The President's note in regard to the so-called English Blockade is too lengthy and the principles too much involved to attempt to set them out in a journal of this character, but we cannot forbear calling attention to the way in which the law laid down by the United States courts during our Civil War is now quoted by the English courts against the contentions of our Government. We think all lawyers will agree that international law, in order to be adequate as well as just must have regard to the circumstances of the times, and the English Admiralty Court, in the cases of the *Kim,* the *Alfred Nobel,* the *Fridland* and the *Bjornstjerne Bjornson,* held that in these days of easy transit, if the doctrine of Continuous Voyage or Continuous Transportation is to hold at all, it must cover not only voyages from port to port at sea but also transportation by land, until the real as distinguished from the merely ostensible destination of the goods is reached, so that where cargoes of goods which were conditionally contraband were being carried by neutral ships to a neutral port, not for the purpose of being imported into the common stock of the country, but for trans-shipment to hostile territory, it must be held that, the actual and real ultimate destination being of an enemy character, the cargoes were liable to capture, and, being intended for the use of the enemy's forces, were confiscable. The Court quotes Chancellor Kent's Commentaries, page 139, and states that although there is no reported case in the English court where the doctrine stated is applied in terms to the carriage of contraband goods, it was so applied and extended by the United States courts against the British Government in the time of the American Civil War; and its application was accepted by the British Government of the day and acted upon by the International Commission which sat under the treaty made in Washington, May 8th, 1871, when that Commission, composed of an Italian, an American and a British delegate, unanimously disallowed the claims in the *Peterhoff* (5 Wall. 28), which was the leading case upon the subject of continuous transportation in relation to contraband goods. In the case of the *Bermuda* (3rd Wall. 514), the Supreme Court of the United States decided that the true test as to the real

destination of a cargo is whether it was consigned to the neutral port to be there delivered for the purpose of being imported into the common stock of the country, and in the celebrated case of the *Springbok* (5 Wallace 1), the Supreme Court of the United States acted upon inferences as to the destination (in the case of blockade) on this very ground. Of course these inferences could be dispelled by evidence produced by the shippers.

The English Admiralty Court also quotes the *Dolphin* (7 Fed. Cas. 868), holding that the Court was not compelled to fix the exact port to which the goods were ultimately destined, so that it was convinced that it was to a port of an enemy. Certainly the United States cannot complain when the English courts sustain the decisions of their highest tribunals.